

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**ROBERT SHANKLIN,**

Plaintiff,

v.

**SLEEP COUNTRY USA, INC.,**

Defendant.

No. 3:10-cv-00406-MO

OPINION AND ORDER

**MOSMAN, J.,**

Plaintiff filed a Motion to Modify Class Definition [102] as prompted at oral argument on September 13, 2011. Defendant responded [104] and plaintiff replied [105]. Upon review, I adopt plaintiff's proposed definition for the overtime exemption claim class.

**DISCUSSION**

Plaintiff's overtime exemption claim class shall be defined as follows:

All persons who were employed by Sleep Country as a sales associate or store manager at an Oregon store at any time between September 10, 2003, and May 1, 2009, who worked more than 40 hours in any week and who were not paid overtime, but excluding Sleep Country's officers, directors, and current employees of Sleep Country above the store manager level.

I find it necessary to redefine the overtime exemption claim class for the follow reasons. First, the class should include sales associates who worked more than 40 hours in a week, regardless of whether the sales associate recorded 40 or more hours on his or her timecard. Second, the class should include sales associates in weeks where he or she worked more than 40 hours in a week but had high enough commissions such that he or she did not receive a minimum guaranteed payment.

As I stated at oral argument however, I am redefining the overtime exemption claim class pursuant to the record currently in front of me. If, for example, defendant proves down the road that a sub-class of plaintiffs was unequivocally subject to the commission sales exemption, this definition will have to be narrowed. Therefore, I reiterate that there is a chance this definition will change over time.

### CONCLUSION

Plaintiff's Motion to Modify Class Definition [102] is GRANTED. Plaintiff's overtime exemption claim class is defined to include the following: All persons who were employed by Sleep Country as a sales associate or store manager at an Oregon store at any time between September 10, 2003, and May 1, 2009, who worked more than 40 hours in any week and who were not paid overtime, but excluding Sleep Country's officers, directors, and current employees of Sleep Country above the store manager level.

IT IS SO ORDERED.

DATED this 3<sup>rd</sup> day of April, 2012.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN  
United States District Court